IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16345 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HR SHUKLA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,2,3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/07/2006

ORAL JUDGMENT

1. Rule. Learned AGP Shri Siraj Gori waives service of notice of rule on behalf of the respondents. Considering the issues involved, the petition is

taken up for final disposal today.

2. Learned advocate for the petitioner clarified at the outset that this petition is confined to release of unpaid post retiral benefits and interest thereon, and the petitioner will take appropriate steps separately regarding his grievances of non payment of higher pay scale.

3. The petitioner is a retired employee of the State Government having superannuated with effect from 31-7-1993. There was a criminal case lodged against the petitioner under the provisions of Prevention of Corruption Act. Since this case was pending when the petitioner was superannuated, his full retirement benefits were not released. Eventually, the petitioner was acquitted by the Trial Court on 23-4-2002. No further appeal appears to have been carried by the State. It is the case of the petitioner that he was paid leave encashment of Rs.45,818/- only on 12-12-2005. It is also the case of the petitioner that amount of Rs.5,000/- towards

gratuity is still not paid. The petitioner has claimed unpaid gratuity without interest and has also prayed for interest on delayed payment of leave encashment.

4. It may be noted that though the petitioner was facing a criminal case, nothing has been pointed out by the respondents to permit the Government to withhold his leave encashment upon his retirement. Even in such a situation, Ordinarily, therefore, leave encashment of the petitioner should have been granted shortly after his retirement. There is substantial delay in releasing this amount. With respect to the unpaid gratuity, considering the nature of allegations made against the petitioner in the criminal case and also considering that the respondents were entitled to withhold the gratuity as per the rules in view of the pending criminal case, I do not think that the petitioner should receive interest on the unpaid gratuity at-least up to the date of his acquittal.

5. In the result, I hold that the petitioner shall receive simple interest at the rate of 8% per annum from the date of retirement till its actual payment on the amount of leave encashment. If the respondents have not fully paid the gratuity as suggested, same shall be paid after verification. In fact, gratuity if any, shall carry simple interest at the rate of 8% per annum from the date of acquittal of the petitioner till its actual payment since at-least upon acquittal, the petitioner should have been paid the amount of gratuity.

6. In the result, the petition is allowed to the above extent. Rule made absolute to the above extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)